S.B.Civil Writ Petition No.5649/2004

M/s. Hema Constructions
vs

State of Rajasthan & Ors.

DATE OF ORDER : - 14.12.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. Shreedhar Purohit,for the petitioner.

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Heard learned counsel for the petitioner.

According to learned counsel for the petitioner, the work contract was awarded to the petitioner by the respondents, but the agreement was not executed between the parties because of the ban imposed by the Election Commission in view of the declaration of the election and, therefore, the petitioner could not have started the work before execution of the contract and, therefore, the delay cannot be attributed to the petitioner. It is also submitted that the petitioner executed the work of good quantity, but the respondents after terminating the contract imposed penalty upon the petitioner, that too, up to the extent of maximum penalty provided for breach of contract. According to learned counsel for the petitioner, the penalty of 10% is the maximum penalty which provided in the contract and not the penalty, which is required to be imposed in all cases. It is also

submitted that penalty could have been upto 10% ranging from minimum. Learned counsel for the petitioner further submits that work contract awarded to the other contractor after termination of the petitioner's contract discloses that in fact, the respondents have never suffered any loss.

After going through the facts of the case, it appears that petitioner raised several disputed questions of fact, like whether the petitioner was guilty for not completing the contract in time, whether the petitioner was entitled for extension of time for completion of work on account of any lawful reason, whether the respondents were also equally responsible for the delay and whether the respondents suffered any loss or damage due to any action of the petitioner, in case the penalty provided in the contract is held to be maximum extent of the penalty then what should be the penalty for not completing the work in time by the petitioner can be gone into only by the civil court and all these facts cannot be determined here in the writ jurisdiction.

In view of the above, the writ petition of the petitioner is dismissed in limine.

(Prakash Tatia), J.

c.p.goyal/-